

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

Civil Action No. 69 CIV. 200
Filed: January 17, 1969 ✓

COMPLAINT

The United States of America, by its attorneys,
acting under the direction of the Attorney General of
the United States, brings this action against the defendant
named herein and complains and alleges as follows:

JURISDICTION AND VENUE

1. This complaint is filed and this action is
instituted against the defendant under Section 4 of the
Act of Congress of July 2, 1890, as amended (15 U.S.C. §4)
commonly known as the Sherman Act, in order to prevent and
restrain the continuing violation by the defendant, as
hereinafter alleged, of Section 2 of the Sherman Act
(15 U.S.C. §2).

2. Defendant International Business Machines
Corporation has offices, transacts business and is found
within the Southern District of New York.

DEFENDANT

3. International Business Machines Corporation, hereinafter referred to as "IBM", is made a defendant herein. IBM was organized under the laws of the State of New York in 1911 and assumed its present name in 1924.

4. IBM is the largest manufacturer of information handling systems in the world. It develops, manufactures and markets electronic and punched card data processing machines and systems, as well as electric typewriters, dictation equipment, and related supply items. In 1967 IBM had total revenues of \$5,345,291,000 with total assets of \$5,598,670,000 and net income of \$651,500,000.

5. IBM conducts its worldwide business through 11 divisions and three subsidiaries. The Service Bureau Corporation, a wholly-owned, but independently operated subsidiary, furnishes data processing services on a fee or contract basis to its customers in the United States. Science Research Associates, Inc., acquired by IBM in 1964 and now operated as a wholly-owned subsidiary, develops and markets instructional and guidance materials and a wide variety of intelligence, aptitude and achievement tests. IBM World Trade Corporation, another wholly-owned subsidiary, conducts all of IBM's business, except that of Science Research Associates, Inc., in over 100 countries outside the United States.

TRADE AND COMMERCE

6. As used herein, a computer is an electronic device which processes information as desired by activating electronic impulses in pre-defined sequences. Digital computers, which represent over 95% of all computer sales and leases, are machines which process information which is symbolized by numerals and processed in that form.

7. A computer system, sometimes referred to as an "electronic data processing system, consists of a machine or a group of automatically intercommunicating machine units capable of entering, receiving, storing, classifying, computing and/or recording data, which system includes at least one central processing unit and one or more storage facilities, together with various input and output equipment.

8. Computer hardware includes all the physical components used in a computer system. Computer software includes the programming know-how and materials necessary to make the computer hardware operative. Computer support includes all manpower and other assistance necessary to make and keep the computer hardware and software operative.

9. The general purpose digital computer is one which has general commercial application and is offered for sale or lease in standard model configurations. Special purpose digital computers are designed for particularized needs or purposes and are produced for use by a limited number of customers but not made generally available to all customers.

10. The computer industry is an extension or outgrowth of the electrical tabulating industry. Electrical tabulating machines are devices for recording on a unit basis, and automatically classifying, computing and printing alphabetic and numeric accounting and statistical information by controlled electrical means. IBM was originally organized as the Computer-Tabulating-Recording Co. and from 1911 to 1933 it owned a majority of the capital stock of, and controlled, The Tabulating Machine Company, a corporation organized in 1905 under the laws of the State of New Jersey. During this period IBM operated in the tabulating field through The Tabulating Machine Company, which was merged with IBM in 1933. The tabulating business continued to represent the major product line of IBM until the advent of the electronic computer in the 1950's.

11. In 1932 the United States filed a civil antitrust suit against IBM and Remington Rand, Inc. charging that they had unreasonably restrained and monopolized interstate trade and commerce in tabulating machines and tabulating cards by entering into agreements in which they agreed:

- (a) to lease only and not sell tabulating machines;
- (b) to adhere to minimum prices for the rental of tabulating machines as fixed by IBM, and

- (c) to require customers to purchase their card requirements from the lessor or pay a higher price for the rental of machines.

The agreements between IBM and Remington Rand, Inc. were cancelled in 1934 prior to the trial of that suit, and the issues presented by the agreements were withdrawn from the case. The lease provision requiring the lessees to purchase cards from the lessor was adjudged to be illegal by this Court. (13 F. Supp. 11, affirmed 298 U.S. 131).

12. On January 21, 1952 the United States filed another civil antitrust suit against IBM charging that it had violated Sections 1 and 2 of the Sherman Act by attempting to monopolize and monopolizing interstate trade and commerce in the tabulating industry. The complaint alleged that IBM owned more than 90% of all the tabulating machines in the United States and manufactured and sold about 90% of all tabulating cards sold in the United States. This suit was terminated by the entry of a consent judgment by this Court on January 25, 1956 (Civil Action 72-344).

13. Although a few experimental computers were assembled during the late 1940's, the general purpose digital computer did not have its beginning until the early 1950's. The first installations of general purpose digital computers were made by Remington Rand, Inc. beginning in 1951. IBM followed with its first general purpose digital computer being produced and delivered near the end of 1952.

14. Remington Rand, Inc., which was later merged with Sperry Corporation to form Sperry Rand Corporation, took the early lead in the development and sale of general purpose digital computers. However, IBM surpassed that company in the sales of such computers by the late 1950's. Both companies' early activities in the general purpose digital computer marketplace were regarded primarily as extensions of their earlier activities in the tabulating industry. The prior customers for the tabulating machinery presented an inherent source of potential users of general purpose digital computers.

15. The computer industry has been one of tremendous growth. By 1955 some 400 computers had been installed in the United States. By 1960 the number of installations approximated 6,000 and by the end of 1967 the number of computer installations exceeded 43,000. In terms of total revenues from the sale or lease of general purpose digital computers, the industry has seen an increase from approximately \$600,000,000 in 1961 to in excess of \$3,000,000,000 in 1967.

16. IBM's total revenues from the sale or lease of general purpose digital computers in the United States increased from \$506,668,000 in 1961 to \$2,311,353,000 in 1967. During this period of time IBM's share of total industry revenues of these products varied from approximately 69% to approximately 80%. In 1967 IBM's share of such revenues was approximately 74%. Its nearest competitor

in 1967 had revenues of approximately \$156,000,000 or 5% of the total.

17. Approximately 76% of the value of all general purpose digital computers shipped in the United States in 1967 were shipped by IBM while its two nearest competitors together accounted for about 8% of such shipments. At the end of the same year, approximately 67% of the value of all installed general purpose digital computers in the United States was represented by machines that had been manufactured by IBM.

18. IBM manufactures general purpose digital computers at its plants located in Poughkeepsie and Endicott, New York, and manufactures parts, components and subassemblies at numerous other plants in the United States. Such computers and related products are shipped to customers located throughout the United States.

OFFENSES

19. Beginning in or about 1961 and continuing up to and including the date of the filing of this complaint, the defendant has attempted to monopolize and has monopolized the aforesaid interstate trade and commerce in general purpose digital computers in violation of Section 2 of the Sherman Act (15 U.S.C. §2). Said offenses are continuing and will continue unless the relief hereinafter prayed for is granted.

20. Pursuant to and in furtherance of the aforesaid attempt to monopolize and the monopolization, the defendant has pursued a manufacturing and marketing policy that has prevented competing manufacturers of general purpose digital computers from having an adequate opportunity effectively to compete for business in the general purpose digital computer market, and has done, among other acts, the following:

- (a) Maintained a pricing policy whereby it quotes a single price for hardware, software and related support and, thereunder, (i) discriminated among customers by providing certain customers with extensive software and related support in a manner that unreasonably inhibited the entry or growth of competitors; and (ii) limited the development and scope of activities of an independent software and computer support industry as a result of which the ability of its competitors to compete effectively was unreasonably impaired;
- (b) Used its accumulated software and related support to preclude its competitors from effectively competing for various customer accounts;

- (c) Restrained and attempted to restrain competitors from entering or remaining in the general purpose digital computer market by introducing selected computers, with unusually low profit expectations, in those segments of the market where competitors had or appeared likely to have unusual competitive success, and by announcing future production of new models for such markets when it knew that it was unlikely to be able to complete production within the announced time; and
- (d) Dominated the educational market for general purpose digital computers, which was of unusual importance to the growth of competitors both by reason of this market's substantiality and by reason of its ultimate impact on the purchasing decisions in the commercial market, by granting exceptional discriminatory allowances in favor of universities and other educational institutions.

EFFECTS

21. The aforesaid offenses have had, among other things, the following effects:

- (a) The defendant has monopolized and continues to monopolize the general purpose digital computer market in the United States;

- (b) Actual and potential competition in the manufacture and marketing of general purpose digital computers in the United States has been restrained; and
- (c) Competitors of IBM have been improperly deprived of the opportunity to earn competitive profits on their general purpose digital computers and actual and potential competitors have been discouraged from entering or continuing in the business of manufacturing and marketing general purpose digital computers.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that the defendant has attempted to, and did monopolize interstate trade and commerce in the general purpose digital computer industry in violation of Section 2 of the Sherman Act.
2. That the defendant and all persons, firms, and corporations acting in its behalf or under its direction or control be permanently enjoined from engaging in, carrying out, or renewing any contracts, agreements, practices, or understandings, or claiming any rights thereunder, having the purpose or effect of continuing, reviving, or renewing the aforesaid violation of the Sherman Act, or any contract, agreement, combination or conspiracy having like or similar purpose or effect.

3. That the defendant hereafter be required to price separately and to offer to sell or lease separately, and to sell or lease separately to any applicant upon such terms and conditions as the Court may direct

(a) general purpose digital computers; (b) peripheral equipment; (c) computer software; and (d) other customer support which it manufactures or offers to its customers.

4. That the defendant hereinafter be required to refrain from the use of special allowances, buy-backs of computer time, or research grants, in the sale or lease of any and all general purpose digital computers, peripheral equipment, computer software and other customer support equipment or services which it manufactures or offers to any of its customers, where the effect of such practices may be unreasonably to inhibit the entry or growth of competitors.

5. That the defendant hereinafter be required to refrain from entering into the production of computer hardware which is not likely to result in returns reasonably related to returns from other computer hardware products sold or leased, or which could be sold or leased, by the defendant.

6. That the defendant hereinafter be required to refrain from the announcement of the development or production of any planned computer hardware or software until such product has been subjected to normal testing.

7. That the plaintiff have such relief by way of divorcement, divestiture and reorganization with respect to the business and properties of the defendant as the Court may consider necessary or appropriate to dissipate the effects of the defendant's unlawful activities as hereinbefore alleged in this complaint, and to restore competitive conditions to the general purpose digital computer industry.

8. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem proper in the premises.

9. That the plaintiff recover the costs of this suit.

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Filed Oct. 27, 1970

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

Civil Action No. 65-200

AMENDED ANSWER

Defendant International Business Machines Corpora-
tion ("IBM") for its answer to the complaint:

1. Denies the averments of Paragraph 1 except that the complaint purports to be filed and the action instituted under the statutes therein specified.
2. Admits the averments of Paragraph 2.
3. Admits the averments of Paragraph 3.
4. States that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 4 except that IBM develops, manufactures and markets various products, including electronic and punched card data processing equipment, electric typewriters, dictation equipment and related supply items, and except that, as stated in IBM's 1967 Annual Report to Stockholders: the gross income from sales, service and rentals of IBM and its subsidiaries for 1967 was \$5,345,290,993; the assets of IBM and its subsidiaries at year-end 1967 were \$5,598,670,392; and the net earnings after taxes of IBM and its subsidiaries for 1967 were \$651,499,558.

5. Denies the averments of the first sentence of Paragraph 5 except that IBM has 11 divisions and three

subsidiaries and that business is conducted in many countries. Admits the averments of the second and third sentences of Paragraph 5. Denies the averments of the fourth sentence of Paragraph 5 except that IBM World Trade Corporation is a wholly owned subsidiary of IBM which conducts business, other than the business of Science Research Associates, Incorporated, in many countries outside the United States.

6. Denies the averments of Paragraphs 6, 7, 8 and 9 except to the extent that said Paragraphs purport to define the terms "computer", "digital computer", "computer system", "electronic data processing system", "computer hardware", "computer software", "computer support", "general purpose digital computer" and "special purpose digital computer" as such terms are used in the complaint and except that:

(a) certain computers are electronic devices which process information as desired by activating electronic impulses in predefined sequences;

(b) IBM is without knowledge or information sufficient to form a belief as to the truth of the averment that digital computers represent over 95% of all computer sales and leases;

(c) certain computer systems are sometimes referred to as electronic data processing systems and as consisting, in part, of a machine or group of automatically intercommunicating machine units capable of entering, receiving, storing, classifying, computing and/or recording data including at least one central processing unit and one or more storage facilities together with various input and output equipment; and

(d) the terms "computer hardware", "computer software", and "computer support" are sometimes used in the manner set forth in paragraph 8.

7. States that it is without knowledge or information sufficient to form a belief as to the truth of the averments of the first sentence of Paragraph 10. Denies the averments of the second sentence of Paragraph 10 except that certain tabulating machines are devices for recording on a unit basis and automatically classifying, computing and printing alphabetic and numeric accounting and statistical information by controlled electrical means. Denies the averments of the third sentence of Paragraph 10 except that defendant was originally organized as the Computer-Tabulating Recording Co. and from 1911 to 1933 owned a majority of the capital stock of the Tabulating Machine Company, a corporation organized in 1905 under the laws of the State of New Jersey. Denies the averments of the fourth sentence of Paragraph 10 except that the Tabulating Machine Company produced and marketed tabulating machines and that the Tabulating Machine Company was merged with IBM in 1933. Denies the averments of the fifth sentence of Paragraph 10.

8. Denies the averments of Paragraph 11 except that in 1932 plaintiff filed a civil antitrust suit against IBM and Remington Rand, Inc., in this Court and a decree was thereafter entered therein and except that it refers to the record of the proceedings in that suit for the contents thereof.

9. Denies the averments of Paragraph 12 except that on January 21, 1952, plaintiff filed a civil antitrust

suit in this Court alleging that IBM had violated the Sherman Act and except that it refers to the complaint and to the consent judgment entered therein on January 25, 1956, for their contents.

10. States that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 13, except that a few experimental computers were assembled during the late 1940's, and states that the definition of "general purpose digital computer" contained in Paragraph 9 of the complaint is too ambiguous to permit the determination (a) of when the so-called "general purpose digital computer" had its "beginning", (b) of whether the installations of computers as defined in Paragraph 6 of the complaint by Remington Rand, Inc., in 1951, constituted the installation of so-called "general purpose digital computers", and (c) of whether IBM's 701 data processing system which was marketed near the end of the year 1952 constitutes a so-called "general purpose digital computer".

11. States that it is without knowledge or information sufficient to form a belief as to the truth of the averments of the first and second sentences of Paragraph 14, except upon information and belief that Remington Rand, Inc., merged with Sperry Corporation to form Sperry Rand Corporation and that Sperry Rand Corporation and its predecessors took the early lead in the sale of computers as defined in Paragraph 6 of the complaint, and states that the definition of "general purpose digital computer" in Paragraph 9 of the complaint is too ambiguous to permit a determination of whether Sperry Rand Corporation and its predecessors took the early lead in the sale of so-called "general purpose digital computers" and

of whether IBM surpassed Sperry Rand Corporation in the sale of so-called "general purpose digital computers" by the late 1950's. Denies the averments of the third and fourth sentences of Paragraph 14.

12. States that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 15 except upon information and belief that the data processing industry has been an industry of tremendous growth and change, that in 1955 approximately 400 computers as defined in Paragraph 6 of the complaint had been installed in the United States and that by 1960 approximately 6,000 computers as defined in Paragraph 6 of the complaint had been installed in the United States.

13. States that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 16, and states that the definition of "general purpose digital computers" contained in Paragraph 9 of the complaint is too ambiguous to permit the determination of IBM's total revenues from the sale or lease of so-called "general purpose digital computers" in the United States.

14. States that it is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 17.

15. Denies the averments of Paragraph 18 except that IBM manufactures computers as defined in Paragraph 6 of the complaint at plants in Poughkeepsie and Endicott, New York, and elsewhere and manufactures parts, components and subassemblies at other plants in the United States and that such computers and related products are shipped to customers

in many parts of the United States, and states that the definition of "general purpose digital computers" contained in Paragraph 9 of the complaint is too ambiguous to permit the determination of whether IBM manufactures such so-called "general purpose digital computers" at its plants located in Poughkeepsie and Endicott, New York.

16. Denies the averments of Paragraphs 19, 20 and 21, and each of the subdivisions thereof.

FOR A FIRST AFFIRMATIVE DEFENSE

17. On January 21, 1952, plaintiff filed a civil antitrust action in this Court (Civil Action No. 72-344) alleging that IBM had violated the Sherman Act ("the 1952 Complaint"). That action was terminated by a Final Judgment entered by this Court, on the consent of the United States and IBM, on January 25, 1956 ("the 1956 Judgment").

18. In the 1952 Complaint, the United States alleged that certain alleged actions of IBM constituted violations of law, including:

"Preventing the development and growth of independent businesses in the United States for maintaining and repairing tabulating machines" (para. 45(d));

and

"IBM has imposed upon its lessees the following terms and conditions:

"a. machines are leased only under tabulating service agreements providing for a single charge covering rental of the machines, instruction in the use of the machines, and repairs and maintenance;" (para. 50).

The Prayer for Relief of the 1952 Complaint asked that IBM be enjoined from imposing any condition which

"requires any purchaser or lessee of any such tabulating or auxiliary machines to make use

of the repair and maintenance service of the defendant." (Para. 14(3));

and

"That in leasing any of its tabulating or auxiliary machines, the defendant be ordered and directed to make separate charges for (a) the rental of each such machine; (b) for maintenance and repair services; and (c) instruction to the lessee in the use of any such machines." (para. 16)

19. The 1956 Judgment applies to both "electronic data processing" equipment and "tabulating machines".

20. The 1956 Judgment provides that IBM must "offer. . . . to maintain and repair at reasonable and nondiscriminatory prices and terms IBM tabulating and electronic data processing machines for the owners of such machines." (para. VI(b))

In all other respects IBM was permitted to supply other services without charge, including maintenance and repair services to lessees.

21. The 1956 Judgment also provides that:

"IBM is hereby ordered and directed:

"(a) To offer to render, without separate charge, to purchasers from it of tabulating or electronic data processing machines the same type of services, other than maintenance and repair services, which it renders without separate charge to lessees of the same types of machines;" (para. VI(a))

and:

"IBM is hereby ordered and directed:

"(c) Upon written request to furnish, on a nondiscriminatory basis, without charge or at a reasonable charge made to reimburse IBM for the cost of furnishing them, to purchasers and lessees of IBM tabulating machines and electronic data processing machines, copies of manuals, books of instruction, pamphlets, diagrams, or similar documents which pertain to the operation or application of such machines owned or leased by such purchasers or lessees." (para. IX(c))

22. None of the provisions of the 1956 Judgment

referred to above have been modified or terminated, nor has any application for such modification or termination been made.

23. Based upon the foregoing facts, the allegation in paragraph 20(a) of the Complaint that IBM allegedly committed violations of law in that it "maintained a pricing policy whereby it quotes a single price for hardware, software and related support . . ." is barred by the 1956 Judgment and res judicata, and collateral estoppel.

WHEREFORE, IBM demands a judgment dismissing the complaint.

September 1, 1970

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

Plaintiff consents to filing
of the within Amended Answer
and acknowledges receipt of
a copy thereof.

/s/ BURTON R. THOMSEN
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AMENDED ANSWER

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